IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1719 OF 2003

Shri Mohan P.Amre. .. Petitioner

Vs.

State of Maharashtra & Ors. .. Respondents

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None for the Petitioner.

Shri B.H.Mehta, APP for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 24th JANUARY, 2005.

P.C.

1. None present for the Petitioner. Perused the records.

2. The Petitioner challenges the orders passed by the trial Court and the Revisional Court whereby the Petitioner's application for deletion of certain portion of the cross-examination recorded by the trial Court has been rejected. The trial Court had rejected the application mainly on the ground that there is no provision either in the Code of Criminal Procedure or

in any other Statute empowering the Magistrate to delete any such evidence, once recorded. Undoubtedly, the Magistrate does not enjoy inherent powers under the Code of Criminal Procedure. Being so, the findings arrived at by the Magistrate in relation to the absence of powers to Magistrate to delete the portion already recorded in the absence of any such Statute, cannot be found fault with, and for the same reason, the order passed by the Revisional Court also cannot be found fault with.

3. In the Writ Petition, a new point is sought to be raised regarding absence of jurisdiction to the Magistrate to record evidence in the absence of public prosecutor. The records nowhere disclose whether the Criminal Case No.220 of 1996 wherein the Petitioner had filed the application, was a case instituted on a police report or otherwise than on a police report. In any case, the proceedings initiated by either of the methods, the provisions comprised under Chapter XIX of the Code of Criminal Procedure nowhere require the presence of the public prosecutor to enable the Magistrate to record the evidence. Similar is the case in relation to the recording of evidence in summons cases by the Magistrate. Being so, mere absence of public prosecutor would not be an

obstruction for the Magistrate to proceed with the matter for the purpose of recording of evidence, once the prosecution is able to produce the witnesses in support of the charge against the accused.

4. For the reasons stated above, there is no case made out for interference in the impugned orders in exercise of writ jurisdiction under Article 227 of the Constitution of India. The Petition is, therefore, rejected.